No. 76590-1

SANDERS, J. (dissenting)—We do not license drivers to assure they are current in child support payments; we license them to promote highway safety. By the same token, revocation of a driver's license for a reason completely unrelated to the only legitimate police power justification for the license in the first place violates due process.

We have long relied on the three prong due process test articulated in *Lawton v. Steele*.[1] For a law or regulation to satisfy due process it must (1) be aimed at achieving a legitimate public purpose, (2) use means that are reasonably necessary to achieve that purpose, and (3) not be unduly oppressive on individuals. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 252, 119 P.3d 325 (2005); *ASARCO Inc. v. Dep't of Ecology*, 145 Wn.2d 750, 762, 43 P.3d 471 (2002); *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 21, 829 P.2d 765 (1992); *Robinson v. City of Seattle*, 119 Wn.2d 34, 830 P.2d 318 (1992); *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330, 787 P.2d 907 (1990); *Orion Corp. v. State*, 109 Wn.2d 621,

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[1] 152 U.S. 133, 14 S. Ct. 499, 38 L. Ed. 385 (1894). "The classic statement of the rule in *Lawton v. Steele* is still valid today." *Goldblatt v. Hempstead*, 369 U.S. 590, 594, 82 S. Ct. 987, 8 L. Ed. 2d 130 (1962) (citation omitted); c*f. Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 125 S. Ct. 2074, 2087, 161 L. Ed. 2d 876 (2005) (Due process requires an "exaction[] substantially advanced the *same* interests that land-use authorities asserted would allow them to deny the permit altogether.").

646-47, 747 P.2d 1062 (1987). The problem here is that there is not only no "reasonably necessary" relationship between road safety and revoking a driver's license to pay child support, there is no rational relationship at all. In other words, the legitimate end of licensing drivers to promote highway safety does not justify the means of revoking a driver's license to deter delinquency in child support.

Many cases illustrate the necessity of connecting the ground for revocation with the purpose of the license. Otherwise the State could simply license every human endeavor (shoeshine boys?) simply to deter anyone from undesirable conduct of any nature through the threat of license revocation.

For Greg Amunrud the sting of this statute is doubled since it involves not only a license to drive but a license to drive a taxi to earn a living. I question the logic of state revocation of a license to earn a living for failure to pay a debt—although I suppose there is a certain incentive to do so if the federal government will give a monetary grant to the State in return.[2] But it is up to us to protect the constitutional rights of our citizens, we should not be concerned that the legislature will lose its federal bribe money—certainly I'm not.

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[2] The majority notes that while states are not *required* to participate in the Child Support Enforcement Program, those states without procedures to "'withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support'" are not eligible to receive federal grants or moneys. Majority at 2-3 (quoting 42 U.S.C. § 666(a)(16)).

I. Liberty and Property Interest to be Protected

Government may not deprive one of life, liberty, or property without due process of law as guaranteed by the fourteenth amendment to the United States Constitution[3] and article I, section 3 of the Washington State Constitution.[4] The right to employment without undue government interference and the right to a driver's license implicate both liberty and property.

The right to pursue a common occupation free from unreasonable governmental interference is of ancient origin. William Blackstone recognized, "At common law every man might use what trade he pleased." 1 William Blackstone, Commentaries *427. The Magna Carta guaranteed "all merchants are to be safe and secure in leaving and entering England, and in staying and traveling [sic] in England . . . to buy and sell free from all maletotes by the ancient and rightful customs." James Clarke Holt, Magna Carta 461-63 (2d ed. 1992). In *Rex and Allen v. Tooley*, 80 Eng. Rep. 1055 (K.B. 1614), Lord Edward Coke, Chief Justice of the King's Bench, considered and dismissed a suit against an upholsterer for failure to serve an apprenticeship before taking up his trade, holding, "[N]o skill

[3] "[N]or shall any state deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV, § 1.

[4] "No person shall be deprived of life, liberty, or property, without due process of law." Wash. Const. art. I, § 3.

there is in this, for he may well learn this in seven hours." *Id*. at 1057. Thus unskilled labor was not subject to licensing perhaps appropriate to more technical trades. Expounding further,

> [B]y the very common law, it was lawful for any man to use any trade thereby to maintain himself and his family; this was both lawful, and also very commendable, but yet by the common law, if a man will take upon him to use any trade, in which he hath no skill; the law provides a punishment for such offenders, and such persons were to be punished in the court leet, and by actions brought, as by the cases before . . . .

Id. at 1055. Thus *Allen* is an early example of the judicial recognition of the fundamental right to pursue an occupation, free from unreasonable governmental interference in the licensing context. Many other examples are marshaled in Timothy Sandefur, *The Right to Earn a Living*, 6 Chap. L. Rev. 207, 209-18 (2003). The English common law was the origin of the constitutional right as we know it in America.[5]

For substantive due process purposes the United States Supreme Court has likewise recognized "the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity" that the

[5] *Slaughter-House Cases,* 83 U.S. (16 Wall.) 36, 105, 21 L. Ed. 394 (1873) ("And when the Colonies separated from the mother country no privilege was more fully recognized or more completely incorporated into the fundamental law of the country than that every free subject of the British empire was entitled to pursue his happiness by following any of the known established trades and occupations of the country . . . ." (Field, J., dissenting)).

Constitution was meant to protect. *Truax v. Raich*, 239 U.S. 33, 41, 36 S. Ct. 7, 60 L. Ed. 131 (1915).[6] Perhaps Justice William O. Douglas said it with the greatest

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[6] *See also Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923) (The liberty interest guaranteed includes freedom "to engage in any of the common occupations of life . . . ."); *Dent v. West Virginia*, 129 U.S. 114, 121, 9 S. Ct. 231, 32 L. Ed. 2d 623 (1889) ("It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition."); *New State Ice Co. v. Liebmann*, 285 U.S. 262, 278, 52 S. Ct. 371, 76 L. Ed. 747 (1932) ("[N]othing is more clearly settled than that it is beyond the power of a state, 'under the guise of protecting the public, arbitrarily [to] interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.'" (alteration in original) (quoting *Jay Burns Baking Co. v. Bryan*, 264 U.S. 504, 513, 44 S. Ct. 412, 68 L. Ed. 813 (1924))); *Schware v. Bd. of Bar Exam'rs*, 353 U.S. 232, 238-39, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957) ("[A] State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."); *Bd. of Regents v. Roth*, 408 U.S. 564, 572, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972) (recognizing the right "'to engage in any of the common occupations of life'") (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923)); *Lowe v. Secs. Exch. Comm'n*, 472 U.S. 181, 228, 105 S. Ct. 2557, 86 L. Ed. 2d 130 (1985) (quoting *Dent* and *Schware*, *supra*, for the proposition that citizens have a right to follow any lawful calling subject to licensing requirements that are rationally related to their fitness or capacity to practice the profession); *Greene v. McElroy*, 360 U.S. 474, 492, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959) ("[R]ight to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment"); *Benigni v. City of Hemet*, 879 F.2d 473, 478 (9th Cir. 1988) (due process provides people a constitutional "right to pursue an occupation"); *Chalmers v. City of Los Angeles*, 762 F.2d 753, 757 (9th Cir. 1985) ("Chalmers had a right protected by the due process clause to engage in [his] occupation."); *Cornwell v. Cal. Bd. of Barbering & Cosmetology*, 962 F. Supp. 1260, 1274 (S.D. Cal. 1997) ("'The right to labor or earn one's livelihood in any legitimate field of industry or business is a right of property, and any unlawful or unreasonable interference with, or abridgement of, such right is an invasion thereof and a restriction of the liberty of the citizen as guaranteed by the Constitution.'" (quoting

eloquence:

> The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property. The American ideal was stated by Emerson in his essay on *Politics*, "a man has a right to be employed, to be trusted, to be loved, to be revered." It does many men little good to stay alive and free and propertied, if they cannot work. To work means to eat. It also means to live. For many it would be better to work in jail, than to sit idle on the curb. The great values of freedom are in the opportunities afforded man to press to new horizons, to pit his strength against the forces of nature, to match skills with his fellow man.

Barsky v. Bd. of Regents, 347 U.S. 442, 472, 74 S. Ct. 650, 98 L. Ed. 829 (1954) (Douglas, J., dissenting).

The right to pursue an occupation free from unreasonable governmental interference is *fundamental*. *Supreme Court of N.H. v. Piper*, 470 U.S. 274, 280 n.9, 285, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985) (quoting *United Bldg. & Constr. Trades Council v. City of Camden*, 465 U.S. 208, 219, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984) in which the court has described, "the pursuit of a common calling" as "one of the most *fundamental* of those privileges" (emphasis added)). Washington also recognizes the "fundamental right[]" to "carry on business." *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902); *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 813, 83 P.3d 419 (2004) (*Grant County* II).

Duranceau v. City of Tacoma, 27 Wn. App. 777, 620 P.2d 533 (1980)

Whitcomb v. Emerson, 46 Cal. App. 2d 263, 273, 115 P.2d 892 (1941))).

applied the right in practice. There the city of Tacoma, attempting to discourage anyone from living in the watershed town of Lester, published a policy to deny use of a forest service road to logging operators who employed Lester residents. Ronald D. Duranceau, a Lester resident and logging company employee, commenced suit pursuant to 42 U.S.C. § 1983, alleging violation of "his fundamental right to employment." *Duranceau*, 27 Wn. App. at 780. The Court of Appeals agreed, reversing a previous summary judgment of dismissal, holding, "[t]he right to hold specific private employment free from unreasonable government interference," is a fundamental right subject to "'strict scrutiny.'" *Id*.

Ample precedent supports Amunrud's claim that he has not only a constitutional right but a *fundamental* one to pursue a common occupation free from unreasonable government interference. Professional and motor vehicle licenses create both property and liberty interests requiring due process protection. *Barry v. Barchi*, 443 U.S. 55, 99 S. Ct. 2642, 61 L. Ed. 2d 365 (1979); *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971).

II. Standard of Review

To evaluate whether a statute violates due process, we first consider the nature of the right affected. If the statute limits a fundamental, constitutionally secured right or implicates a suspect class, the standard of review is strict scrutiny. *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 57-58, 109 P.3d 405 (2005). Strict

scrutiny is satisfied only if the State can show that it has a compelling interest, *id*., and the regulation is narrowly tailored to serve that compelling state interest. *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997). Authorities cited *infra* hold the right to pursue a common occupation absent unreasonable government interference is indeed a "fundamental" right subject to strict scrutiny. However even if that were not the case, due process requires at least a "rational relation" between licensing for driving and revocation for failure to pay child support.[7]

III. Application of the Three Prong, *Lawton v. Steele*, Substantive Due Process Test

A. The License Must Be Aimed at Achieving a Legitimate Public Purpose

The only reason to require driver's licenses in general, and commercial driver's licenses in particular, is "to make the highways as safe as possible by requiring each potential operator to demonstrate a knowledge of rules and regulations of the road, a history of compliance with those rules and regulations, and the physical ability to safely operate a motor vehicle." *State v. Clifford*, 57 Wn. App. 127, 132, 787 P.2d 571 (1990).

Similarly, Washington's Uniform Commercial Driver's License Act, chapter

[7] *See* Clark Neily, *No Such Thing: Litigating Under the Rational Basis Test*, 1 N.Y.U. J. L. & Liberty 898 (2005) (a critical and searching review of the rational basis test).

46.25 RCW, states the purpose of the chapter is to "reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by . . . [d]isqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses." RCW 46.25.005(1)(b). *See Merseal v. Dep't of Licensing*, 99 Wn. App. 414, 418-19, 994 P.2d 262 (2000) (holding the Uniform Commercial Driver's License Act is liberally construed to protect the public from alcohol impaired drivers of commercial vehicles and that public safety is a sufficient basis for distinguishing between commercial drivers and the general public).

Just as initially granting or withholding a driver's license must at least be rationally related to promoting the safety of the streets and highways, revocation of that license must similarly be necessary to achieve that goal. *State v. Hopkins*, 109 Wn. App. 558, 564, 36 P.3d 1080 (2001) ("A long line of Washington cases holds that revocation of a driver's license is . . . designed solely for the protection of the public in the use of highways."). Moreover, licenses are remedial (i.e., protecting highway safety), not punitive. *State v. McClendon*, 131 Wn.2d 853, 868, 935 P.2d 1334 (1997); *State v. Griffin*, 126 Wn. App. 700, 705, 109 P.3d 870, 873 (2005) ("[T]he general rule in Washington has long been 'the suspension or revocation of a driver's license is not penal in nature and is not intended as punishment, but is designed solely for the protection of the public in the use of the highways.").

Before enactment of the statute at issue, the governing statutory authority to

suspend driver's licenses set forth six grounds for license revocation. These were all related to the traffic safety:

> (1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;
>
> (2) Has, by *reckless or unlawful operation of a motor vehicle*, caused or contributed to an accident resulting in death or injury to any person or serious property damage;
>
> (3) Has been convicted *of offenses against traffic regulations governing the movement of vehicles*, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a *disregard for the safety of other persons on the highways*;
>
> (4) Is *incompetent to drive a motor vehicle* under RCW 46.20.031(3); or
>
> (5) Has failed to respond to a notice of *traffic* infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation . . . ; or
>
> (6) Has committed one of the *prohibited practices relating to drivers' licenses* defined in RCW 46.20.336.

Former RCW 46.20.291 (1993) (emphasis added).

However the challenged amendment to RCW 46.20.291 added a seventh ground, unrelated to traffic safety:

> (7) Has been certified by the department of social and health services as a person who is not in compliance with a child support order or a residential or visitation order as provided in RCW 74.20A.320.

Former RCW 46.20.291 (1997).[8]

[8] In 1998 the legislature revised RCW 46.20.291, causing subsection (7) to be

B. Are the Means Necessary to Achieve the Legitimate Purpose?

To determine whether the means are necessary to achieve the end, we must look to the purpose and lawful justification of requiring driver's licenses in the first place, i.e., the license requirement must be justified by a legitimate exercise of the police power. Any attempt to revoke the license must similarly be tied to that same legitimate exercise of the police power.

The police power is a power reserved by the states to protect the health and safety of its citizens. *Butchers' Union Slaughter-House & Live-Stock Landing Co. v. Crescent City Live-Stock Landing & Slaughter-House Co*., 111 U.S. 746, 754-55, 4 S. Ct. 652, 28 L. Ed. 585 (1884). Wash. Const. art. I, § 1 ("All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.").

States may require a variety of licenses to protect health, safety, and welfare. For example, medical licenses are required to protect the public to ensure that doctors have achieved the requisite training prior to practicing medicine.[9] Similarly,

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renumbered to subsection (8). Laws of 1998, ch. 165, § 12.

[9] RCW 18.71.050 establishes eligibility requirements for a license to practice medicine, which include proof the applicant has attended and graduated from an approved school of medicine and completed two years of postgraduate medical training, is of good moral character, and is physically and mentally capable of safely carrying on the practice of medicine. RCW 18.71.070 provides applicants must also successfully complete an examination covering subjects and topics, knowledge of which is generally required of a candidate for a degree of doctor of medicine. *See*

states require licenses for those engaging in the business of cosmetology, barbering, manicuring, and aesthetics because they "involve the use of tools and chemicals which may be dangerous when mixed or applied improperly . . . ."[10]

However, the power to regulate by granting or revoking licenses is not unlimited. To legitimately exercise the police power, the means of the regulation must have a real and substantial relation to the legitimate reason for licensing the activity. *See Chi., B. & Q. Ry. v. Illinois*, 200 U.S. 561, 593, 26 S. Ct. 341, 350, 50 L. Ed. 596 (1906) ("If the means employed have no real, substantial relation to public objects which government may legally accomplish; if they are arbitrary and unreasonable, beyond the necessities of the case, the judiciary will disregard mere forms and interfere for the protection of rights injuriously affected by such illegal action.").

Cornwell is instructive. *Cornwell v. Cal. Bd. of Barbering & Cosmetology*, 962 F. Supp. 1260, 1263 (S.D. Cal. 1997). There an African hair braiding association brought suit against California state agencies and officials arguing the

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also Ongom v. Dep't of Health, 124 Wn. App. 935, 943, 104 P.3d 29 (holding "purpose of the medical license . . . is to assure professional competence in a highly complex and potentially dangerous occupation"), *review granted*, 155 Wn.2d 1001, 122 P.3d 185 (2005).

[10] RCW 18.16.010, .060; *Cornwell*, 962 F. Supp. at 1274.

licensing requirements of the Barbering and Cosmetology Act (Cal. Bus. & Prof. Code § 7301), as applied to the hair braiders, violated due process because hair braiders were required to attend 1,600 hours of instruction at cosmetology school at a cost of between $5,000 and $7,000 where hair braiding was not even mentioned. *Id*. (citing Cal. Code Reg. § 950.2).

Because cosmetology schools did not teach African hair styling techniques as part of the required curriculum and did not include instruction in African hair styling, natural hair care, braiding, twisting, weaving, locking, or cornrowing, the court found that "[n]inety-six percent of the curriculum would be irrelevant to the occupation for which they would be seeking licensure." *Id*. at 1273.

The court held the license requirement violated due process, observing, "if [we] were to assume that these 65 hours [of instruction in health and safety] are rationally related to the state's interest in protecting the health and safety of its citizens, this education is one small part of a curriculum which plaintiff contends is 96% useless to [hair braiders]." *Id*. The court noted the irrationality of the license requirement:

> To take an extreme example, the state could rationally believe that food preparers need instruction on hygiene, sanitation and disinfection prior to being allowed to prepare food in public schools. It would be irrational however, to require them to go to cosmetology school, even though they might benefit from the 65 hours related to health, hygiene and sanitation. Ninety-six percent of the curriculum would be irrelevant to the occupation for which they would be seeking licensure.

Id.

In sum, the police power to revoke licenses must be rationally related to the goal or purpose of requiring the particular license in the first place. We do not revoke pet licenses for traffic infractions, nor do we deny driver's licenses to those who fail to license their pets (or pay their child support).

People v. Lindner, 127 Ill. 2d 174, 180, 535 N.E.2d 829, 129 Ill. Dec. 64 (1989) applied this principle to driver's licenses. There the Illinois Supreme Court struck down a section of the Illinois Vehicle Code which required mandatory driver's license suspension of defendants convicted of various felonies, including sex and drug offenses. Applying the rational relationship test the court concluded that the means chosen by the Illinois legislature—license suspension—was not a reasonable method to accomplish the goal of the licensing statute—the safe and legal operation and ownership of motor vehicles:

> Under the rational-basis test, a "'legislative enactment must bear a reasonable relationship to the public interest intended to be protected, and the means adopted must be a reasonable method of accomplishing the desired objective.'"

Id. (quoting *People v. Wick*, 107 Ill. 2d 62, 65-66, 481 N.E.2d 676 (1985) (internal quotation marks omitted)). *Accord State v. Gowdy*, 64 Ohio Misc. 2d 38, 40, 639 N.E. 2d 878 (1994) (relying on *Lindner*, 127 Ill. 2d 174, holding the statutory provision mandating license suspension for drug offenses does not bear a

reasonable relationship to the statute's purpose of providing for the safe and legal operation and ownership of motor vehicles).

Professional license revocation also requires a rational relationship between the revocation of the license and the applicant's fitness or capacity to conduct that particular profession. For example, in *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957) the board of bar examiners refused to permit the petitioner to take the bar examination on the ground that he had not shown "good moral character" because of his previous membership in the Communist Party. The Supreme Court held: "A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law." *Id*. at 239. *See also In re Revocation of License to Practice Dentistry of Flynn*, 52 Wn.2d 589, 594, 328 P.2d 150 (1958) (holding that there must be a rational connection between the acts giving rise to the license revocation and Flynn's fitness and capacity to practice dentistry to constitute a valid reason for the revocation).

Justice Madsen once forcefully and articulately argued driver's license revocations must be rationally related to a *driving* offense to satisfy due process. *State v. Shawn P.*, 122 Wn.2d 553, 569, 859 P.2d 1220 (1993) (Madsen, J., dissenting).[11] In *Shawn P.* the majority upheld the validity of a statute that revoked

or denied driver's licenses to minors of a certain age who had been found guilty of possessing or consuming alcohol, regardless of whether the minor drove while possessing or after consuming. *See* RCW 66.44.365; RCW 13.40.265. Both the majority and the dissent recognized the same approach—that the license revocation must have a necessary relationship to driving. The majority upheld the statute, relying on legislative findings supported by "'voluminous statistical data' demonstrating that a disproportionate number of juveniles drive while impaired and that they thus pose a serious risk to the safety of themselves and others." *Shawn P.*, 122 Wn.2d at 562 & n.33 (quoting Michael S. Vaughn, Victor E. Kappeler & Rolando V. del Carmen, *A Legislative and Constitutional Examination of "Abuse and Lose" Juvenile Driving Statutes*, 19 Am. J. Crim. L. 411, 427 (1992)).

In dissent Justice Madsen applied a due process analysis, reasoning the statute lacked the constitutionally required link to traffic safety:

> This legislation, even if it had not been restricted to a particular age group, would still suffer from a fundamental flaw: there is no rational basis for revoking driver's licenses based on nondriving offenses. The possession or consumption of liquor in no way requires the operation of motor vehicle; therefore, a finding that a person possessed, or even drank from, a can of beer hardly establishes that the person is a threat as a drunk driver.

[11] Justice Madsen cites the majority opinion in *Shawn P.* for the rule that the rational basis test is the most relaxed form of judicial scrutiny. Majority at 18. However, her opinion in the present case does not reconcile or distinguish the substantive conflict between the opinions offered here and both opinions in *Shawn P.*

Shawn P., 122 Wn.2d at 572 (Madsen, J., dissenting). To survive a due process challenge, Justice Madsen stated that there must be an "immediate connection" with operating a motor vehicle and license revocation. *Id*. Even the "mere fact that drinking is associated with driving in the abstract will not suffice to supply the requisite rationality." *Id*. (quoting *Johnson v. State Hearing Exam'r Office*, 838 P.2d 158, 174 (Wyo. 1992) (quoting *Commonwealth v. Strunk*, 400 Pa. Super. 25, 41, 582 A.2d 1326, 1334 (1990) (Popovich, J., dissenting))). Concluding, Justice Madsen opined where there is no "immediate connection with operating a motor vehicle, the license revocation is arbitrary and lacks the rational relationship demanded by substantive due process." *Id.*

Revocation of a driver's license for failure to pay child support provides even less rational relationship to driving than a minor found guilty of possessing or consuming alcohol. At least in *Shawn P*. there was a feasible argument that a minor who consumes alcohol illegally on one occasion might in the future also drive while under the influence. By contrast, a failure to make child support payments does not even have a potential future association with unsafe driving.

We have required such a rational relationship for other statutes as well. In *State v. Riley*, 121 Wn.2d 22, 36-38, 846 P.2d 1365 (1993), we explained the underlying purpose of the necessity of a rational relationship between the conditions imposed in a criminal sentence and the underlying crime:

> The philosophy underlying the "crime-related" provision is that "[p]ersons may be punished for their crimes and they may be prohibited from doing things which are directly related to their crimes, but they may not be coerced into doing things which are believed will rehabilitate them."

Riley, 121 Wn.2d at 36-37 (quoting David Boerner, Sentencing in Washington § 4.5, at 4-7 (1985)).

Similarly, in the context of restitution we have held:

> Restitution must be reasonably related either to a defendant's duty to make reparation or to the prevention of future crimes. *State v. Morgan*, 8 Wn. App. 189, 190, 504 P.2d 1195 (1973); *State v. Summers*, 60 Wn.2d 702, 375 P.2d 143 (1962). If a restitution order is expected to direct a defendant to accept responsibility for a crime, the order must be reasonably related to that crime. As noted in *State v. Stalheim*, 275 Ore. 683, 688, 552 P.2d 829, 831 (1976): "when a defendant is ordered to make reparation to persons other than the direct victim of a crime, the rehabilitative effect of making the offender clearly appreciate the injury caused by his offense would, in our opinion, be significantly diluted."

State v. Eilts, 94 Wn.2d 489, 493-94, 617 P.2d 993 (1980).

The only conceivable purpose to revoke one's driver's license for failure to make child support payments is deterrence by threatened punishment.[12] The problem with this approach was well summarized in *Strunk*, as stated in *Shawn P*:

> The test of "rational relationship" as defined by the "deterrence" rationale is not logically cabined solely to the offense of underage drinking or offenses committed by minors. Consider a legislature desirous of deterring juvenile vandalism. Under today's

[12] *Compare Griffin*, 126 Wn. App. at 705 ("'suspension or revocation of a driver's license is not penal in nature'" (quoting *State v. Scheffel*, 82 Wn.2d 872, 879, 514 P.2d 1052 (1973))).

> rationale, and owing to the intractable nature of juvenile deterrence, the legislature might rationally consider suspension of operator's privileges as an effective deterrent. Following like reasoning, the legislature might penalize public drunkenness or disorderly conduct or loitering with suspension of operator's privileges. To be sure, these are but a few examples. Troublesome with the "deterrence" rationale is that its limits are largely defined by the ingenuity of legislators, not by the test of rationale [sic] relationship under the substantive component to the Due Process Clause.

Shawn P., 122 Wn.2d at 573 (Madsen, J., dissenting) (quoting *Strunk*, 400 Pa. Super. at 43 n.3 (Popovich, J., dissenting)).

Amunrud was deprived that process due when the State revoked his driver's license for failing to pay an obligation unrelated to his driving.

C. The Statute is Unduly Oppressive

The third prong of the substantive due process test requires an analysis of whether the statute is "unduly oppressive." *Presbytery of Seattle*, 114 Wn.2d at 331. Several factors are considered to assist the determination whether a regulation is unduly burdensome: "the nature of the harm sought to be avoided; the availability and effectiveness of less drastic protective measures; and the economic loss suffered by the property owner." *Id.*

1. Nature of harm sought to be avoided

The statute at issue deprives anyone six months arrears in child support his or her driver's license or commercial driver's license regardless of occupation.

As applied to Amunrud, the statute not only unreasonably interferes with the

property interest in his commercial driver's license but also his fundamental right to pursue a common occupation. The United States Supreme Court in *Bell*, 402 U.S. at 539, said, "Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood."

2. Availability of less drastic measures

The majority argues license revocation is a highly effective enforcement tool. Extortion normally is. However, historic methods of collecting child support remain as a less intrusive and more effective way to accomplish the goal of the statute than taking away the debtor's source of income. These means include but are not limited to garnishment,[13] civil liability,[14] execution,[15] property liens,[16] contempt of court, and federal prosecution under the Child Support Recovery Act of 1992 and Deadbeat Parents Punishment Act of 1998, 18 U.S.C. § 228. These means reach the objective directly without the oppressive revocation of an unrelated license.

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[13] RCW 74.20A.080, .095.

[14] RCW 74.20A.100.

[15] RCW 6.17.020.

[16] RCW 74.20A.060, .130.

3. Economic loss suffered

Taking away Amunrud's commercial driver's license denies him the ability to pursue his occupation as a taxi cab driver. Denying him the ability to continue to work the only occupation he has worked for over 20 years will place an undue and oppressive burden on his ability to earn a living—and will, ironically, terminate his ability to make future child support payments.

In sum, the statute deprives Amunrud his liberty and property absent that process due under the state and federal constitutions.

CONCLUSION

I would reverse, and dissent.

AUTHOR:
Justice Richard B. Sanders

WE CONCUR:

Justice Tom Chambers

Justice James M. Johnson